

**Virginia Soil and Water Conservation Board  
Stormwater Management Regulations Technical Advisory Committee  
Thursday, June 14, 2007  
Science Museum of Virginia**

**Technical Advisory Committee Members Present**

Michelle Brickner, Fairfax County  
Jack Frye, Department of Conservation and Recreation  
Kevin Haille, Loudoun County  
Lee Hill, Department of Conservation and Recreation  
Shelby T. Hertzler, Rockingham County  
William J. Johnston, City of Virginia Beach  
Joe Lerch, Chesapeake Bay Foundation  
Ved "Wade" Malhotra, City of Newport News  
R. T. "Roy" Mills, Virginia Department of Transportation  
Jeff Perry, Henrico County  
David Rundgren, New River Valley PDC  
Gerald Seeley, Jr., Department of Environmental Quality  
Ingrid Stenbjorn, Town of Ashland  
William H. Street, James River Association  
Burton R. Tuxford, II, Virginia Department of Environmental Quality

**Technical Advisory Committee Members Not Present**

Alecia Daves-Johnson, Piedmont Soil and Water Conservation District  
Jerry W. Davis, Northern Neck PDC  
Bob Kerr, Kerr Environmental Services Corporation  
Pat O'Hare, Home Builders Association of Virginia  
Reginald Parrish, U.S. Environmental Protection Agency  
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District  
Phil Schirmer, City of Roanoke  
John Tippet, Friends of the Rappahannock

**Facilitator**

Judy Burtner, J. Burtner and Associates

**DCR Staff Present**

Ryan J. Brown, Assistant Director of Policy and Planning  
Eric R. Capps, E&S Control and Construction Permitting Manager  
C. Scott Crafton, Stormwater Compliance Specialist  
David C. Dowling, Director of Policy, Planning and Budget  
Jim Echols, Urban Programs Compliance Engineer  
Michael R. Fletcher, Board and Constituent Services Liaison  
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Carrie Hileman, Policy and Planning Intern  
Christine Watlington, Policy, Planning and Budget Analyst  
Elizabeth Andrews, Office of the Attorney General

**Others Present**

Joe Battiatia, Contech Stormwater  
Mike Dieter, Hanover County  
Elizabeth Dieztman, Aqualaw  
Shelly Frye, CH2M Hill  
Mike Gerel, Chesapeake Bay Foundation  
Steven Herzog, Hanover County  
Larry Land, Virginia Association of Counties  
Will Sanford, Dominion Power  
Michelle Virts, Timmons Group  
Laura Wheeling, Hampton Roads Planning District Commission  
Charles Williamson, Prince William County

**Opening Remarks and Review of Agenda**

Ms. Burtner called the meeting to order. She noted that the process for this meeting would be different than previous meetings. The agenda called for the review of Part III, Part XIII and Part II of the Draft Regulations. Ms. Burtner turned the meeting over to Mr. Dowling.

Mr. Dowling said that Parts III and XIII were sent out to TAC members, but that staff had received no comments regarding those sections. He said that a revised Part II had been distributed and that staff had been working to revise that section and address concerns since the last meeting.

Mr. Dowling suggested reviewing Part II and then using any remaining time to address concerns regarding Parts III and XIII.

Mr. Dowling said that members were provided a copy of the current draft with all of the sections under revision. A copy of the June 11, 2007 version of this document is included as Attachment #1.

Mr. Dowling said that the document addressed the questions for each section. He turned the meeting over to Mr. Hill to review the document.

A member asked if the committee would deal with questions pertaining to Part I. Another member asked about definitions.

Mr. Dowling said that time would be provided to address member concerns regarding those sections.

Mr. Hill began the review with Part II, Page 18.

**4VAC 50-60-40 Authority and applicability.**

There were no comments regarding this section.

**4VAC 50-60-50.**

This section was repealed.

**4VAC 50-60-53. General Requirements**

This section is existing language. There were no comments regarding this section.

**4VAC 50-60-56. Applicability of other laws and regulations**

A member asked the meaning of the acronym “CWA.”

Mr. Hill said that referred to the “Clean Water Act” and that the definition was included in Part I.

**4VAC 50-60-60. Water quality.**

This section was repealed.

**4VAC 50-60-63. Water Quality Criteria Requirements**

A member asked about the definitions for the handbook and clearinghouse.

Mr. Hill said these definitions were provided in Part I. Mr. Hill said that there would be a technical advisory committee established for corrections and changes to the handbook as necessary.

A member asked if anything in the handbook could be overridden by the website and also if there were BMPs in the handbook.

Mr. Hill said that there would be no BMPs in the handbook. The BMPs will be listed on the website.

Mr. Crafton said there would be a general reference to BMP categories in the handbook but that the technical standards would be on the website/clearinghouse.

Mr. Hill noted that there would also be a technical advisory committee for the website.

Regarding Section A1, a member asked how the units could be changed or adjusted if they didn't align with the watershed.

Mr. Crafton said DCR staff were available to work with localities on that issue.

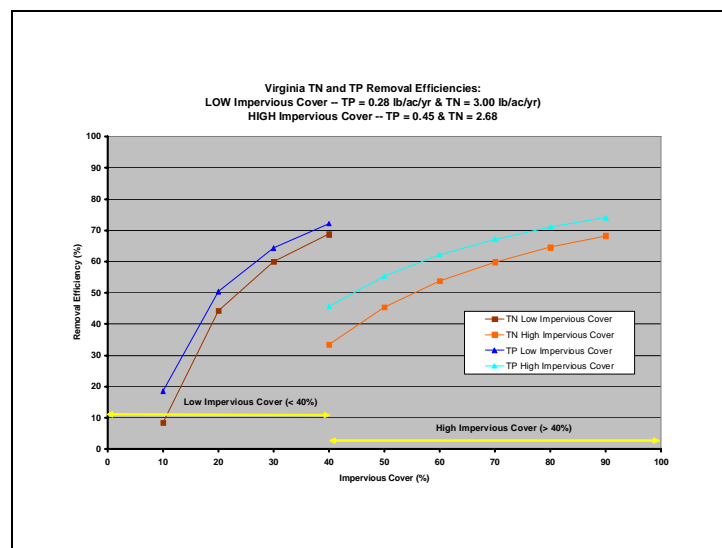
A member said that the more detail included the more likely the units would not line up directly with the watershed.

A member asked what if the site does not drain completely to one hydrologic unit.

Mr. Hill said that would require addressing two separate units.

A member noted a concern that this could encourage landowners to attempt to reduce the amount of pollutants they have by paving. Under this scenario, the load requirement would be less if the pavement area is increased.

Mr. Crafton referred to the following chart:



Mr. Crafton noted that one of the results of the study showed that nitrogen and phosphorus were at lower levels at high impervious sites.

Mr. Crafton reviewed the following charts:

### Selected Virginia EMCs

|                               | Total Phosphorus | Total Nitrogen |
|-------------------------------|------------------|----------------|
| Low Impervious Sites (< 40%)  | 0.28 mg/L        | 2.67 mg/L      |
| High Impervious Sites (> 40%) | 0.23 mg/L        | 1.12 mg/L      |

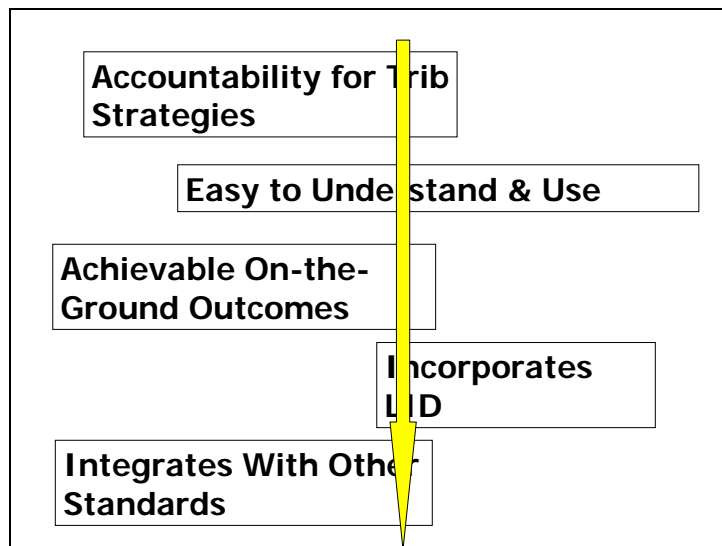
### Site-Based Performance Standards

|                               | Total Phosphorus | Total Nitrogen   |
|-------------------------------|------------------|------------------|
| Low Impervious Sites (< 40%)  |                  | 3.00 lbs/acre/yr |
| High Impervious Sites (> 40%) | 0.45 lbs/acre/yr |                  |

- Low Impervious – P is critical pollutant (yards, soil loss)
- High Impervious – N is critical pollutant (atmospheric deposition contribution to stormwater)
- BMP treatment mechanisms can be designed to treat both P & N

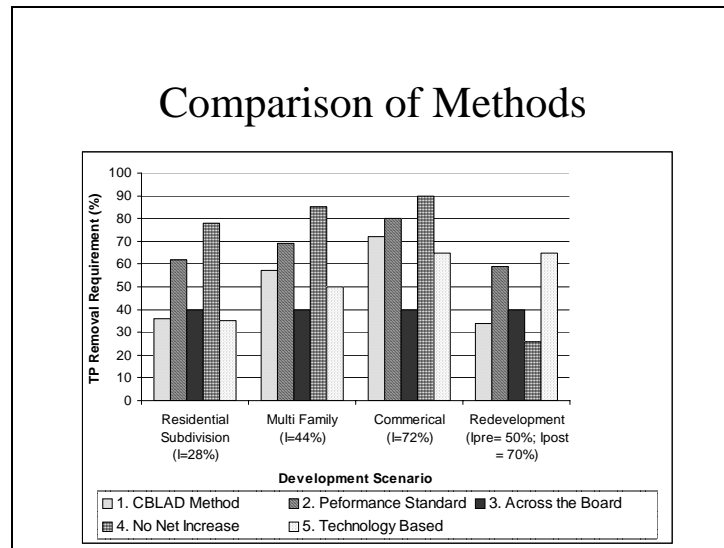
| Land Use Category & Post-Development Impervious Cover Range | Post-Development Loads for Total Phosphorus (TP) & Total Nitrogen (TN) | Pollutant Removal Rate (%RR) Required for TP & TN | Candidate BMPs   |
|---|--|---|--|
| <b>HIGH IMPERVIOUS (&gt; 40%)</b>                           |  |   |  |
| High Impervious # 1<br>1 = 41 – 50%                         | TP = 1.01 lbs/acre/yr;<br>TN = 4.91 lbs/acre/yr                        | TP = 55%<br>TN = 45%                              | 1. Bioretention #1<br>2. Infiltration #2<br>3. Wetland #2<br>4. WQ Swale #1<br>5. Filtering Practice                   |
| High Impervious # 2<br>1 = 51 – 60%                         | TP = 1.19 lbs/acre/yr;<br>TN = 5.80 lbs/acre/yr                        | TP = 60%<br>TN = 55%                              | 1. Bioretention #2<br>2. Infiltration #2<br>3. Wetland #2<br>4. WQ Swale #2<br>5. Filtering Practice                   |
| High Impervious # 3<br>1 = 61 – 75%                         | TP = 1.46 lbs/acre/yr;<br>TN = 7.12 lbs/acre/yr                        | TP = 70%<br>TN = 60%                              | 1. Bioretention #2<br>2. Infiltration #2<br>3. Wetland #2<br>4. Filtering Practice (Enhanced – expanded pre-treatment) |
| High Impervious # 4<br>1 = > 75%                            | TP = 1.74 lbs/acre/yr;<br>TN = 8.45 lbs/acre/yr                        | TP = 75%<br>TN = 70%                              | 1. Bioretention #2<br>2. Infiltration #2<br>3. Filtering Practice (Enhanced – expanded pre-treatment)                  |
|   |  |   |  |

Mr. Crafton reviewed the goals for the BMP Clearinghouse



Mr. Crafton said that the BMP Clearinghouse Committee is attempting to move away from the constant discussion regarding numbers. He said there will be handbook and training programs to assist localities in their relationship with developers.

Mr. Crafton reviewed the comparison of methods.



A member said that a lot of folks want to use the performance-based approach. He said that the type of BMP with the performance-based approach is quite different than using the technology based approach.

A member said that when the numbers were given to the locality engineers, the numbers were different.

A member said that a small percentage difference would not make a significant difference in phosphorus and nitrogen removal. He said that the graph needed to be revised so that it was not providing an incentive for people to add more impervious cover.

A member said that it was a matter of policy and guidance and noted that a difference of 1% impervious cover should not automatically mean a different category.

Mr. Dowling said that staff understood the concerns and would welcome suggestions as to how to address. He said that staff would review the calculations.

At this time the committee recessed for a break.

Following the break, Mr. Hill continued with the review, beginning on page 19 of the draft, line 806.

A member asked why, on item #3 the provision for phosphorous was removed.

Mr. Crafton said that the main reason was for the focus on impervious cover, which would typically provide for the reduction in phosphorus.

Mr. Hill continued.

On lines 819-221 of the draft, a member asked for clarification of the term “to be applied independently.”

Mr. Hills said that if a site drains to two different hubs that treatment must be applied to both. They must be treated as separate units.

A member asked if the regulations should allow for other scientifically proven methods so that the handbook does not need frequent revision.

Mr. Hill said that there could be a statement that allows for different methodology with approval by the Board.

Mr. Crafton noted that procedure had been utilized by the Chesapeake Bay Local Assistance Board. He said that the Board interprets it to mean that other methodologies must achieve similar results.

Mr. Hill noted that these regulations could not move forward without the BMP handbook and webpage being in place.

Mr. Dowling said that the intended approach is that the handbook and the regulations will be available at the same time. He noted that the BMP Clearinghouse was moving forward with work on the handbook.

Mr. Crafton said that the intent of the BMP Clearinghouse committee is to have information available to be cross-referenced with the regulations. That information will be available on the DCR website.

Mr. Hill continued.

On line 830 of the draft a member asked if rather than “may allow offsite controls” the term should be “in lieu of onsite controls.”

Mr. Dowling said that the hope is that each locality would try to achieve what they can onsite.

A member said that she did not understand why the concept made it so difficult to use offsite controls if the same results were being achieved.

A member suggested allowing for offsite controls as long as they were within the same hydrologic unit.

Mr. Dowling said that, for discussion purposes, DCR felt this was a compromise to include this section.

Mr. Crafton said these were the same criteria used under the Bay Act.

A member asked why, from a water quality standpoint, it mattered if the reduction was onsite or offsite.

Mr. Crafton said that the main objection is that with offsite solutions, something in the drainage system is sacrificed.

A member said that his objection to making it easier for offsite solutions is that it would make it easier for developers to buy credits for the reduction.

Mr. Dowling said that staff would again review this section.

Mr. Hill continued with the review.

A member asked about the LID practice in the handbook and noted that her understanding was that the practices would be included in the clearinghouse.

Mr. Crafton said that there is considerable debate nationally about handbooks and what should be included.

Mr. Hill continued with the review of the next section.

#### **4VAC 50-60-65 Water Quality Compliance**

Mr. Scott said that the CWP report had concluded that the water quality benefits of extended detention basins are so low and problematic that they were not included in the BMP selections.

A member said that if this is not included, localities would need clear guidance.

A member question why Table 1 included so much technical information.

Mr. Crafton said that the DCR position was that this needed to be enforceable.

Mr. Dowling said that from policy and legal discussions the comfort level of staff was to include the technical information.

Mr. Hill reviewed Table #2.

A member questioned if the technology was resulting in the performance needed.

At this time the committee recessed for lunch.

Following lunch, Mr. Hill continued the review.

**4VAC 50-60-66 Water Quantity**

A member said there needs to be a quantitative guide to erosion and flooding.

Mr. Dowling said that staff has heard that request, but did not yet have an answers. He said that what is embodied in the regulations in that regard is set out in law and that DCR and the TAC did not have the latitude to make changes there.

A member noted that the law also requires that the stormwater provisions found in the Erosion and Sediment Control Law must be embodied in this provision.

Mr. Dowling said that staff has looked at that issue. He said that DCR was relying on the TAC to show if a quantifiable approach needed to be incorporated and where it should be included.

Members agreed that quantitative criteria should be included.

**4VAC 50-60-70. Stream channel erosion**

This section was repealed.

**4VAC 50-60-73 Design storms**

Mr. Hill noted that the use of the 2 and 10-year 24-hour storm requirement was an amendment to the regulations.

**4VAC 50-60-76. Linear development projects**

A member asked the difference between a stormwater management plan and a comprehensive stormwater management plan.

Mr. Hill said the plans were site specific. A comprehensive plan covers the watershed.

**4VAC 50-60-80. Flooding**

This section was repealed.

**4VAC 50-60-83 Stormwater management impoundment structures or facilities**

A member suggested eliminating the term “compelling reason.”

A member said that the concept was still covered in the water regulations.

**4VAC 50-60-86 Riparian Buffers**

A member noted that in the definition of riparian buffers there was a discrepancy as the riparian buffer definition said “adjacent to state waters.”

It was noted that the riparian buffer is a requirement, not an optional practice.

**4VAC 50-60-90. Regional (watershed-wide) stormwater management plans.**

This section was repealed.

**4VAC 50-60-93. Stormwater Management Plan Development**

There were no comments regarding this section.

**4VAC 50-60-96 Comprehensive watershed stormwater management plans**

It was noted that language in this section needs to be clarified.

At this time the committee recessed for a break.

Following the break, Mr. Hill addressed Part IIIA.

The following sections were repealed:

**4VAC40-10-100. Applicability.**

**4VAC50-60-110. Technical criteria for local programs.**

**4VAC50-60-120. Requirements for local program and ordinance.**

**4VAC50-60-130. Administrative procedures; stormwater management plans.**

**4VAC50-60-140. Administrative procedures; exceptions.**

**4VAC50-60-150. Administrative procedures; maintenance and inspections.**

**4VAC50-60-102. Authority and Applicability.**

There were no comments regarding this section.

**4VAC50-60-104. Technical criteria for qualifying local programs.**

A member noted there was a need to mention variances.

**4VAC50-60-106. Qualifying local program administrative requirements.**

A member asked about providing “regulations.”

Mr. Hill said that the locality may wish to add additional requirements.

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A member asked if the state would provide a sample ordinance.

Mr. Hill said that a sample ordinance based on the regulations would be provided.

A member asked if DCR would issue the general permit.

Mr. Hill said that there would be procedures to allow localities to issue the general permit.

Mr. Brown noted that DCR would authorize localities to issue the permit.

**4VAC50-60-108. Qualifying local program stormwater management plan review.**

A member noted that the term “state waters” was too broad a definition.

At this time Ms. Burtner noted that further review would continue at the next meeting.

Mr. Dowling noted that there were two additional meetings scheduled for June 26 and June 29.

Mr. Dowling noted that the TAC needed to finish the review of Part III and look at Part XIII.

The meeting was adjourned.

Attachment #1

## **CHAPTER 60**

# **VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS**

### **Part I**

#### **4VAC50-60-10. Definitions.**

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

~~"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.~~

~~"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed-specific values for the average land cover condition based upon 4VAC50-60-110.~~

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.~~

~~"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.~~

"Board" means the Virginia Soil and Water Conservation Board.

"Buffer management plan" means a plan developed by a qualifying local program that outlines how riparian buffers adjacent to perennial streams or streams with a watershed area greater than 50 acres in size will be maintained, established, or both on development and redevelopment sites.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway with defined bed and banks that conducts continuously or periodically flowing water.

~~"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.~~

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations that specifies how the water quality and quantity components of stormwater are to be managed on a watershed-wide basis.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"Co-permittee" means a permittee to a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

"Development" means ~~a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the department, or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Event mean concentration or EMC" means the total mass load of a pollutant parameter divided by the total runoff water volume discharged during an individual storm event.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP program.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

~~"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.~~

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Individual control strategy" means a final VSMP permit with supporting documentation showing that effluent limits are consistent with an approved wasteload

allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

~~"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.~~

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
  - a. Physical interconnections between the municipal separate storm sewers;
  - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

- c. The quantity and nature of pollutants discharged to surface waters;
  - d. The nature of the receiving waters; and
  - e. Other relevant factors.
4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means ~~a statement of the various methods employed by a locality or the Department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.~~

"Locality" means a county, city, or town.

"Low Impact Development" or "LID" means a design strategy with the goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques to create a functionally equivalent hydrologic site design. Hydrologic functions of storage, infiltration and ground water recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and distributed micro-scale stormwater retention and detention areas, reduction of impervious surfaces, and the lengthening of runoff flow paths and flow time. Other strategies include the preservation/protection of environmentally sensitive site features such as riparian buffers, wetlands, steep slopes, valuable (mature) trees, flood plains, woodlands, and highly permeable soils.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means a level of implementing stormwater practices and programs which achieve pollutant reductions and take into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, water quality and quantity, and geographic features. MEP is achieved, in part, by selecting and implementing effective structural and nonstructural BMPs and rejecting applicable BMPs only when the BMPs would not be technically feasible or the cost would be prohibitive and unreasonable. MEP is a dynamic performance standard, which evolves over time as urban runoff management knowledge increases. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions. A stormwater management program must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. This continual assessment, revision, and improvement of the stormwater management program is expected to ultimately achieve compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; or
- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640.

Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other

than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under §306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with §306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with §306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns,

operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Perennial stream" means, for the purposes of this chapter, a body of water that flows in a natural or manmade channel year-round during a year of normal precipitation, where the water table is generally located above the streambed for most of the year and groundwater is the primary source for stream flow.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality with a qualifying local program that is delegated authority authorized by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, firm, association, joint venture, public or private or municipal corporation, trust, estate, state, municipality, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any a state, governmental body, any interstate or governmental body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is

approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

"Prior developed lands" means land that has been previously disturbed for development.

"Privately owned treatment works (PVOTW)" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualifying local stormwater management program" or "qualifying local program" means a local program that is administered by a locality that has been authorized by the board to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1170).

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.

"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Riparian buffer" means an area of trees, shrubs, grasses, or a combination thereof, that is (i) at least thirty-five feet in width, (ii) adjacent to state waters, and (iii) managed to maintain the integrity of stream channels and shorelines and (iv) reduces the effects of upland sources of pollution through the infiltration of runoff and filtering of pollutants. A managed lawn adjacent to state waters does not constitute a riparian buffer. The riparian buffer is measured landward (horizontal distance) from the stream bank on both sides of the stream.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" include, but are not limited to velocity, peak flow rate, volume, and time of concentration, and the influencing channel morphology such as sinuosity, channel cross-sectional area, and channel slope.

~~"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.~~

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

~~"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or~~

~~a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.~~

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated planning area in which the land development project is located.

"Site hydrology" means the movement of water on and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

~~"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

~~"Stormwater extended detention basin enhanced" or "extended detention basin enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.~~

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Virginia Stormwater Management Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum criteria for stormwater management programs and land-disturbing activities as set out in Part II of these regulations.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

~~"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing §405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation

requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for BMPs that may be used in Virginia to comply with requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the Department and the Virginia Water Resources Research Center subject to advice from a permanent stakeholder advisory committee.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Virginia Stormwater Management Act and associated regulations and is developed by the Department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act, the Virginia Stormwater Management Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (VSMP) permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

#### **4VAC50-60-20. Purposes.**

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Act and to delineate the procedures and requirements to be followed in connection with VSMP permits issued by the ~~board~~ Board or its designee pursuant to the Clean Water Act and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter shall also establish the Board's procedures for the authorization of a qualifying local program, Board and Department oversight authorities for an authorized qualifying local program, the Board's procedures for utilization by the Department in administering a local program in localities where no qualifying local program is authorized, and the components of a stormwater management program including but not limited to stormwater management standards.

#### **4VAC50-60-30. Applicability.**

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program;
2. The Department in its oversight of locally administered programs or in its administration of a local program;
- ~~2.~~ 3. Every state agency project regulated under the Act and this chapter; and
- ~~3.~~ 4. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in 10.1-603.8 B.

## **Part II Stormwater Management Program Technical Criteria**

### **4VAC50-60-40. Authority and applicability.**

~~This part specifies technical criteria for every stormwater management program and land disturbing activity.~~

Pursuant to the Virginia Stormwater Management Act, § 10.1-603.2 et seq. of the Code of Virginia, the Board is required to take actions ensuring the general health, safety and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the Board under the Stormwater Management Act, the Board is authorized pursuant to §§ 10.1-603.2:1 and 10.1-603.4 to adopt regulations that specify minimum technical criteria for stormwater management programs in Virginia, to establish statewide standards for stormwater management from land disturbing activities, and to protect properties, the quality and quantity of state waters, stream channels, and other natural resources.

In accordance with the Board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a local or state-administered stormwater management program or state agency to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities.

### **4VAC50-60-50. General. Repeal**

### **4VAC50-60-53. General Requirements**

The natural, physical, chemical, biological and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved. Objectives include, but are not limited to, supporting state designated uses and water quality standards.

### **4VAC50-60-56. Applicability of other laws and regulations**

Land disturbing activities shall comply with all applicable laws and regulations related to stormwater management, including but not limited to the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law and the Chesapeake Bay Preservation Act except as provided in § 10.1-603.3 subsection I and all applicable regulations adopted in accordance with those laws. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

### **4VAC50-60-60. Water quality. Repeal**

### **4VAC50-60-63. Water Quality Criteria Requirements**

In order to protect the quality of state waters and to control nonpoint source pollution, a local program shall apply minimum technical criteria and statewide standards for stormwater management to land disturbing activities as specified below:

A. Pursuant to §10.1-603.4, the Board is authorized to establish minimum design criteria for measures to control nonpoint source pollution. In order to address periodic modifications due to continuing advances in types of control measures and engineering methods, such design criteria guidance is set forth in the Virginia Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse website. The Board shall provide for stakeholder input and review prior to the adoption of any design criteria guidance and establish a procedure for advising local governments when such design criteria guidance has been adopted. In requiring the implementation of such control measures for the land disturbing activity, a local program shall, at a minimum, incorporate the following technical criteria and stormwater management standards:

1. At a minimum, where a site completely drains to one Hydrologic Unit Code as identified in Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset (version 2), a local program shall require new development projects and projects occurring on prior developed lands that result in the total percent impervious cover of a site being less than or equal to 40%, to implement BMPs selected and designed to achieve a post-development pollutant load from the site that does not exceed 0.28 pounds of total phosphorus per acre per year and 3.00 pounds of total nitrogen per acre per year.

2. At a minimum, where a site completely drains to one Hydrologic Unit Code as identified in Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset (version 2), a local program shall require new development projects that result in the total percent impervious cover of a site being greater than 40%, to implement BMPs selected and designed to achieve a post-development pollutant load from the site that does not exceed 0.45 pounds of total phosphorus per acre per year and 2.68 pounds of total nitrogen per acre per year.

3. At a minimum, where a site completely drains to one Hydrologic Unit Code as identified in Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset (version 2), a local program shall require projects occurring on prior developed lands that result in the total percent impervious cover of a site being greater than 40%, to implement BMPs selected and designed to achieve a reduction of total nitrogen of at least 28% below the total nitrogen load that existed on the site prior to the project. However, under no circumstance shall the nitrogen load be required to be reduced to below 2.68 pounds of total nitrogen per acre per year.

4. Where a site drains to more than one Hydrologic Unit Code, as identified in Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset (version 2), the pollutant load reduction requirements shall be applied independently to each Hydrologic Unit Code.

5. Total nitrogen load and total phosphorus load shall be calculated using methodologies provided in the Virginia Stormwater Management Handbook.

6. In addition to the above requirements, if a land disturbing activity discharges stormwater to a segment of a state water that has been designated as impaired by the 303(d) Impaired Waters List and a TMDL for that segment has been established and approved by the United States Environmental Protection Agency, additional control measures shall be implemented on a site as necessary to achieve the phosphorus and nitrogen requirements of the TMDL implementation plan.

B. If the local program has adopted a comprehensive watershed stormwater management plan for the watershed within which the project is located pursuant to 4VAC50-60-96, then the local program may allow off site controls in accordance with the plan to achieve the post-development pollutant load water quality technical criteria set out in subsection A.

C. If the local program allows for off-site controls and no plan exists pursuant to subsection B, and if the applicant demonstrates to the satisfaction of the local program authority that post-development pollutant load water quality technical criteria set out in subsection A can only be achieved with off-site controls in accordance with an exception granted pursuant to 4VAC50-60-122, then off-site controls may be considered to achieve the required reductions.

D. The percent of imperviousness may be adjusted through implementation of LID practices, allowing for an adjusted pollution removal rate requirement. The method to be utilized for crediting LID practices toward impervious area adjustments is set out in the Virginia Stormwater Management Handbook. The local program may limit the use of LID practices set out in the Virginia Stormwater Management Handbook. LID practices allowed by the locality shall be reported to the Board when altered from the original program submittal.

#### **4VAC50-60-65. Water Quality Compliance**

A. Compliance with the water quality criteria requirements set out in 4VAC 50-60-63 shall be achieved by applying either the technology-based criteria or the performance-based criteria to the site. Where the site drains to more than one Hydrologic Unit Code, as identified in Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset (version 2), the pollutant load reduction requirements shall be applied independently to each Hydrologic Unit Code.

B. Technology-based criteria. For land-disturbing activities, the post-development pollutant load from the site shall be treated by an appropriate BMP(s) as specified in Table 1 below. Additional BMPs located within the Virginia Stormwater BMP Clearinghouse website may be utilized to achieve the target nutrient pollutant removal rates. The selected BMP(s) shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1 below. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available from the Virginia Stormwater BMP Clearinghouse website.

**Table 1**

| <b><u>Land Use Category and Post-Development Impervious Cover Range</u></b> | <b><u>Pollutant Removal Rate Required for Total Phosphorus (TP) and Total Nitrogen (TN)</u></b> | <b><u>BMPs*</u></b> |
|---|---|---------------------|
| <b><u>LOW IMPERVIOUS (less than or equal to 40%)</u></b>                    |   |                     |

|   |                                    |  |
|---|------------------------------------|--|
| <u>Low Impervious # 1</u><br><u>I = 0 – 10%</u>   | <u>TP = 20%</u><br><u>TN = 10%</u> | <u>1. Good Rural Site Design Principles (no structural BMPs required)</u><br><u>2. Extended detention (???)</u>                                    |
| <u>Low Impervious # 2</u><br><u>I = 11 – 15%</u>  | <u>TP = 40%</u><br><u>TN = 30%</u> | <u>1. Infiltration #1</u><br><u>2. Bioretention #1</u><br><u>3. WQ Swale #2</u><br><u>4. Wetland #1</u><br><u>5. Wet Pond #1</u>                   |
| <u>Low Impervious # 3</u><br><u>I = 16 – 20%</u>  | <u>TP = 50%</u><br><u>TN = 45%</u> | <u>1. Infiltration #1</u><br><u>2. Bioretention #2</u><br><u>3. Wetland #2</u><br><u>4. Wet Pond #1</u>  |
| <u>Low Impervious # 4</u><br><u>I = 21 – 25%</u>  | <u>TP = 60%</u><br><u>TN = 55%</u> | <u>1. Infiltration #1</u><br><u>2. Bioretention #2</u><br><u>3. Wetland #2</u><br><u>4. Wet Pond #2</u><br><u>5. Filtering Practice</u>            |
| <u>Low Impervious # 5</u><br><u>I = 26 – 30%</u>  | <u>TP = 65%</u><br><u>TN = 60%</u> | <u>1. Infiltration #1</u><br><u>2. Bioretention #2</u><br><u>3. Wetland #2</u><br><u>4. Wet Pond #2</u><br><u>5. Filtering Practice</u>            |
| <u>Low Impervious # 6</u><br><u>I = 31 – 40%</u>  | <u>TP = 70%</u><br><u>TN = 70%</u> | <u>1. Infiltration #2</u><br><u>2. Wetland #2</u><br><u>3. Wet Pond #2</u><br><u>4. Filtering Practice</u>   |
| <b><u>HIGH IMPERVIOUS (greater than 40%)</u></b>  |                                    |  |
| <u>High Impervious # 1</u><br><u>I = 41 – 50%</u> | <u>TP = 55%</u><br><u>TN = 45%</u> | <u>1. Infiltration #2</u><br><u>2. Bioretention #1</u><br><u>3. WQ Swale #1</u><br><u>4. Wetland #2</u><br><u>5. Filtering Practice</u>            |
| <u>High Impervious # 2</u><br><u>I = 51 – 60%</u> | <u>TP = 60%</u><br><u>TN = 55%</u> | <u>1. Infiltration #2</u><br><u>2. Bioretention #2</u><br><u>3. WQ Swale #2</u><br><u>4. Wetland #2</u><br><u>5. Filtering Practice</u>            |
| <u>High Impervious # 3</u><br><u>I = 61 – 75%</u> | <u>TP = 70%</u><br><u>TN = 60%</u> | <u>1. Infiltration #2</u><br><u>2. Bioretention #2</u><br><u>3. Wetland #2</u><br><u>4. Filtering Practice (Enhanced – expanded pre-treatment)</u> |

|   |                                    |  |
|---|------------------------------------|--|
| <u>High Impervious # 4</u><br><u>I &gt; 75%</u>   | <u>TP = 75%</u><br><u>TN = 70%</u> | <u>1. Infiltration #2</u><br><u>2. Bioretention #2</u><br><u>3. Filtering Practice (Enhanced</u><br><u>– expanded pre-treatment)</u> |
| *Descriptions of these BMPs may be found on the Virginia Stormwater BMP Clearinghouse website. Additional BMPs and pollutant removal efficiencies located within the Virginia Stormwater BMP Clearinghouse website may be utilized to achieve the target nutrient pollutant removal if approved for use by the local program. |                                    |  |

C. Performance-based criteria. For land-disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the applicable water quality requirement identified in 4 VAC 50-60-63(A) based upon the total percent impervious cover of a site. Pollutant load calculations shall be performed in accordance with the Simple Method and Event Mean Concentrations set out in the Virginia Stormwater Management Handbook. A BMP(s) shall be located, designed, and maintained to achieve the target nutrient pollutant removal efficiencies specified in Table 2 to effectively reduce the pollutant load to the required level. Additional BMPs and pollutant removal efficiencies located within the Virginia Stormwater BMP Clearinghouse website may be utilized to achieve the required pollutant reductions if approved for use by the local program.

**Table 2**

| BMP Type*  | Total Phosphorus Removal Efficiency (percent) | Total Nitrogen Removal Efficiency (percent) | Runoff Reduction Potential |
|--|---|---|----------------------------|
| Infiltration 1   | 65  | 40  | High                       |
| Infiltration 2   | 95  | 65  | High                       |
| Bioretention 1   | 45  | 45  | Medium                     |
| Bioretention 2   | 55  | 55  | High                       |
| WQ Swale 1   | 25  | 45  | Medium                     |
| WQ Swale 2   | 45  | 55  | High                       |
| Filtering Practice   | 65  | 50  | Medium                     |
| Constructed Wetland 1  | 45  | 25  | Low                        |
| Constructed Wetland 2  | 75  | 55  | Low                        |
| Wet Pond 1   | 50  | 30  | Low                        |
| Wet Pond 2   | 75  | 40  | Low                        |
| Extended detention (???)   | 20  | 25  | Low                        |
| * The BMP Types, and specific BMPs within each “type” category, are identified in the Virginia Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse web site. |   |   |                            |

#### **4VAC 50-60-66 Water Quantity**

In order to protect state waters from the potential harms of unmanaged quantities of stormwater runoff, the following technical criteria and statewide standards for stormwater management shall apply to land disturbing activities:

A. Properties and state waters receiving stormwater runoff from any land-disturbing activity shall be protected from sediment deposition, erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum water quantity standards set out in this section and the guidance found in the Virginia Stormwater Management Handbook. Consideration should be given to BMPs that address the quality and quantity of stormwater runoff.

B. Pursuant to §10.1-603.4 subsection 7, a local program shall require that land disturbing activities:

1. Maintain post-development runoff rate of flow and runoff characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology.

2. If stream channel erosion or localized flooding exists at the site prior to the proposed land disturbing activity, the project shall improve to the extent practicable upon the contributing share of the existing predevelopment runoff characteristics and site hydrology consistent with guidance found in the Virginia Stormwater Management Handbook.

C. For the purposes of determining compliance with subsection B, a local program shall require the following:

1. Pre-development stream characteristics shall be verified by physical surveys, geotechnical investigations, and calculations that are consistent with good engineering practices that are acceptable to the local program authority.

2. Flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be calculated for each point of discharge from the land disturbance and such calculations shall include any runoff from the balance of the watershed which also contributes to that point of discharge. Flooding and channel erosion impacts shall be evaluated taking the entire upstream watershed into account, including the modifications from the planned land disturbance. Good engineering practices and calculations shall be used to demonstrate post development stream characteristics, flooding and channel erosion impacts.

3. For purposes of computing predevelopment runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other land cover values may be utilized provided that it is demonstrated to and approved by the local program authority that actual site conditions warrant such considerations.

D. Notwithstanding the requirements of subsection C, any land disturbing activity shall be deemed to have satisfied the requirements of subsection B if the practices implemented on the site are designed to:

1. Detain the water quality volume and to release it over 48 hours;

2. Detain and release over a 24-hour period the expected rainfall resulting from the one year, 24 hour storm; and

3. Reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming that it was in good forested condition, achieved through multiplication of the

forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition.

Such land disturbing activity shall further be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any other section of this regulation.

E. The percent of imperviousness may be adjusted through implementation of LID practices, allowing for an adjusted runoff volume reduction. The method to be utilized for crediting LID practices toward impervious area adjustments is set out in the Virginia Stormwater Management Handbook. The local program may limit the use of LID practices set out in the Virginia Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse website. LID practices allowed by the locality shall be reported to the Board when altered from the original program submittal.

#### **4VAC50-60-70. Stream channel erosion. Repeal**

#### **4VAC50-60-73. Design Storms**

For the purposes of this chapter, unless otherwise specified, the specified design storms shall be defined as a 2 and 10-year 24-hour storm using the site-specific rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). The permit issuing authority may allow for the use of the Modified Rational (critical storm duration) Method pursuant to guidance provided in the Virginia Stormwater Management Handbook.

#### **4VAC50-60-76. Linear development projects**

Unless exempt pursuant to §10.1-603.8 subsection B, linear development projects shall control post-development stormwater runoff in accordance with a stormwater management plan or a comprehensive stormwater management plan developed in accordance with these regulations.

#### **4VAC50-60-80. Flooding. Repeal**

#### **4VAC50-60-83. Stormwater management impoundment structures or facilities**

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams shall be avoided unless compelling reasons are provided justifying the location and the required permits can be obtained.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided. When this is demonstrated to be unavoidable, all stormwater management facility construction shall be in compliance with all applicable requirements under the National Flood Insurance Program, 44 CFR Part 59 and local floodplain ordinances.

C. Stormwater management impoundment structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural

integrity for the 100-year storm event. In no case shall the design standard be less than the 100-year storm event for any stormwater management impoundment structure.

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a geological study of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

E. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4 VAC 50-60-63 and the water quantity criteria set out in 4 VAC 50-60-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies.

#### **4VAC50-60-86. Riparian Buffers**

A. In areas not subject to the Chesapeake Bay Preservation Act (§10.1-2100 et seq.) and its attendant regulations, a local program shall require that riparian buffers defined pursuant to this Chapter, adjacent to perennial streams or streams whose watershed is greater than 50 acres in size, on development and redevelopment sites, be maintained during and following the land disturbing activity. If no such riparian buffers are existing at the time of the land disturbing activity, then riparian buffers shall be established.

If a local program desires to vary the riparian buffer requirement, a local program may develop a riparian buffer plan that satisfactorily protects water quality and quantity and that includes riparian protection strategies for the maintenance of existing buffers and the establishment of new buffers. The local program shall submit the riparian buffer plan to the Board for approval.

B. Additions to required riparian buffers or improvements in land cover to existing riparian buffers statewide may be eligible for LID credits if approved by the local program.

#### **4VAC50-60-90. Regional (watershed-wide) stormwater management plans. Repeal**

#### **4VAC50-60-93. Stormwater Management Plan Development**

A. A stormwater management plan for a land disturbing activity shall apply these stormwater management technical criteria to the entire land disturbing activity.

B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land disturbing activity.

C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

#### **4VAC50-60-96. Comprehensive watershed stormwater management plans**

A. Localities may develop comprehensive watershed stormwater management plans to be approved by the Board that meet the water quality and quantity requirements of this chapter on a watershed basis. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land disturbing site

are achieved within the same Hydrologic Unit Code or the adjacent downstream Hydrologic Unit Code, as identified in Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset (version 2), or within Hydrologic Unit Codes approved by the Board, pursuant to guidance provided in the Virginia Stormwater Management Handbook. State and federal agencies intending to develop large tracts of land may develop or participate in comprehensive watershed stormwater management plans where practicable. The local program shall document nutrient reductions achieved through the plan's implementation. If land uses upon which the plan was based change or if any other amendments are deemed necessary by the local program, the local program shall provide plan amendments to the Board for review and approval.

B. The objective of a comprehensive watershed stormwater management plan is to address the stormwater management concerns in a given watershed and to better integrate stormwater management facilities and practices. The implementation of comprehensive watershed stormwater management plans shall mitigate the impacts of new development and provide for the remediation of erosion, flooding or water quality and quantity problems caused by existing development within the given watershed.

C. If the local program allows for a pro rata fee in accordance with §15.2-2243, then the reductions required for a site by this chapter may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those requirements in accordance with that section of the Code and this chapter.

## **Part IIIA**

### **Local Programs**

**4VAC50-60-100. Applicability.** Repeal

**4VAC50-60-110. Technical criteria for local programs.** Repeal

**4VAC50-60-120. Requirements for local program and ordinance.** Repeal

**4VAC50-60-130. Administrative procedures: stormwater management plans.** Repeal

**4VAC50-60-140. Administrative procedures: exceptions.** Repeal

**4VAC50-60-150. Administrative procedures: maintenance and inspections.** Repeal

**4VAC50-60-102. Authority and Applicability.**

In accordance with the Virginia Stormwater Management Act, §10.1-603.2 et seq., the Board may authorize a locality to administer a qualifying local program, if the locality has adopted a local stormwater management program in accordance with §10.1-603.3 subsections A or B, and the Board has deemed such program consistent with the Virginia Stormwater Management Act and these regulations in accordance with §10.1-603.3 subsection F. Pursuant to §10.1-603.4, the Board is required to establish standards and procedures for such an authorization.

This part specifies the minimum technical criteria and the local government ordinance requirements for a local program to be considered as a qualifying local program. Such criteria include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement.

**4VAC50-60-104. Technical criteria for qualifying local programs.**

A. All qualifying local programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) and shall comply with the requirements of 4VAC50-60-460 subsection L.

B. When a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter or implemented a comprehensive stormwater management plan, the Department shall consider such requirements in its review of state projects within that locality in accordance with Part IV of these regulations (4VAC50-60-160 et seq.).

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

**4VAC50-60-106. Qualifying local program administrative requirements.**

A. A qualifying local program shall provide for the following:

1. Identification of the authority authorizing coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1170), the plan reviewing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. Regulations and technical criteria to be used in the qualifying local program;

3. Procedures for the submission and approval of plans;

4. Assessment and collection of fees;

5. Inspection and monitoring of land disturbing activities for compliance;

6. Procedures for long-term BMP inspection;

7. Enforcement.

B. A locality shall adopt an ordinance that incorporates the components set out in subsection A and that includes state procedures for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

C. A qualifying local program shall report to the Department information related to the administration and implementation of the qualifying local program in accordance with 4VAC50-60-126.

D. A qualifying local program may require the submission of a reasonable performance bond or other financial surety and for the release of such sureties in accordance with the criteria set forth in §10.1-603.8.

#### **4VAC50-60-108. Qualifying local program stormwater management plan review.**

A. A qualifying local program shall require stormwater management plans for review and approval prior to commencement of land disturbing activities.

B. A qualifying local program shall approve or disapprove a stormwater management plan according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of the property owner and the operator and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and the mechanism through which the BMPs will be operated and maintained during and after construction;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. A site plan that identifies the location of receiving state waters and that includes pre-development and post-development conditions for drainage areas, including final drainage patterns and changes to existing contours;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, proposed maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. Proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance; and

j. Agreements between the qualifying local program and the owner that state where maintenance or repair is neglected, or the stormwater management BMP becomes a danger to public health or safety, the qualifying local program has the authority to perform the necessary maintenance and repairs and to recover the costs from the owner.

2. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, and the person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

3. Completeness of a plan shall be determined by the local qualifying program, and the applicant shall be notified of any determination, within 15 calendar days of receipt. If a plan is deemed to be incomplete based on the criteria setout in subsection B1 of this section, the applicant shall be notified in writing of the reasons the plan is deemed incomplete. If a determination is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.

4. Following the determination that a plan is complete, a maximum of 60 calendar days will be allowed for the review of the plan.

5. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the development project. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the qualifying local program.

6. If a plan meeting all requirements of this chapter and of the qualifying local program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. If allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an approved erosion and sediment control plan and preliminary stormwater design for the current and future site work. Such initial plans shall be limited to the initial clearing and grading of the site. An initial plan does not supercede the need for the submittal and approval of a complete stormwater management plan prior to the commencement of activities beyond initial clearing and grading. The information in the initial plan shall include:

1. A map(s) indicating the location of the natural resources and structures at the site and surrounding area as it exists prior to the commencement of the project. This map(s) shall also include an identification of the limits of clearing and grading, existing and proposed drainage patterns, streams, soil types, forest cover, topography, wetlands, and other vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

The map(s) may also include proposed buildings, roads, parking areas, utilities, and stormwater management measures. The map(s) may also show proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads and easements;

2. A narrative statement describing the elements set out in subsection 1. Acreages shall be provided for the overall site, limits of clearing and grading, wetlands, and riparian areas. The narrative shall include a description of how the proposed changes would alter the site's natural conditions; and

3. Such other information as may be deemed necessary by the qualifying local program.

D. Each approved plan may be modified in accordance with the following:

1. Requests for modifications to an approved plan prior to land disturbance shall be allowed only after the review and written approval of the qualifying local program. The qualifying local program shall have 30 calendar days to respond in writing either approving or disapproving such requests.

2. After a land disturbing activity has commenced, based on an inspection, the permittee may request amendments to the approved plan to address deficiencies. The qualifying local program shall have 15 calendar days to respond in writing either approving or disapproving such request.

3. Based on an inspection, the qualifying local program may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

#### **4VAC50-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

A. Coverage shall be authorized by the qualifying local program under the VSMP General Permit for Discharges of Stormwater from Construction Activities in a format determined by the Department and in accordance with the following:

1. The applicant must have an approved initial stormwater management plan or an approved stormwater management plan for the land disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 3 working days of receipt by the qualifying local program that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. Coverage information pertaining to the VSMP General Permit for Discharges of Stormwater from Construction Activities shall be reported to the Department in accordance with 4VAC50-60-126 by the qualifying local program.

**4VAC50-60-114. Qualifying local program inspections.**

A. Inspections of land disturbing activities shall be conducted by a qualifying local program during construction to ensure that the activity is in compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project shall submit an as-built survey, appropriately sealed and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management BMPs have been constructed in accordance with the approved plan. The BMPs shall be inspected for compliance with the as-built survey prior to the release of any associated performance bond or surety.

C. The operator of stormwater management BMPs shall be required to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement, or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement, and shall provide a written report to the qualifying local program.

D. A qualifying local program may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended or shall inspect stormwater management BMPs on an annual basis. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership, the contributing drainage area, and downstream conditions;
4. Demonstrated to be an enforceable inspection program conducted by the qualifying local program or its designee, not to include the property owner, that meets the intent of the regulations; and
5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the qualifying local program.

F. The operator shall allow a right of entry to a representative of the qualifying local program to conduct inspections of the project.

**4VAC50-60-116. Qualifying local program enforcement.**

- A. A qualifying local program shall incorporate the following components:
1. Informal and formal administrative enforcement procedures including:
    - a. Verbal warning and inspection reports;
    - b. Notice of corrective action;
    - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 subsection 7 and 10.1-603.14 subsection D2;
    - d. Notice to comply in accordance with § 10.1-603.11;

- e. Special orders in accordance with § 10.1-603.2:1 subsection 7;
- f. Emergency special orders in accordance with § 10.1-603.2:1 subsection 7; and
- g. Public notice and comment period pursuant to 4 VAC 50-60-660.

2. Civil and criminal judicial enforcement procedures including:

- a. Schedule of civil penalties setout in subsection D;
- b. Criminal penalties in accordance with § 10.1-603.14 subsections B and C; and
- c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 subsection D1

B. A qualifying local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations; and the local ordinance.

C. A qualifying local program may utilize the Department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14 subsection A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

| <u>Violations and Frequency of Occurrence *</u>  | <u>Maximum<br/>\$/occurrence (occur.)/day</u> | <u>Recommended Minimum<br/>\$/occurrence/day</u> |
|--|---|--|
| <u>No Permit Registration</u>  | <u>Up to \$32,500/ occur./ day(s)</u>         | <u>\$10,000/ occur./ day(s)</u>                  |
| <u>No Stormwater Pollution Prevention Plan (SWPPP)</u><br><u>[No SWPPP components including</u><br><u>erosion and sediment (E&amp;S Control Plan)]</u>   | <u>Up to \$32,500/ occur./ day(s)</u>         | <u>\$10,000/ occur./ day(s)</u>                  |
| <u>No approved E&amp;S Control Plan</u>  | <u>Up to \$32,500/ occur./ day(s)</u>         | <u>\$10,000/ occur./ day(s)</u>                  |
| <u>Failure to install stormwater Best Management Practices (BMPs) or E&amp;S controls**</u>  | <u>Up to \$32,500/ occur./ day(s)</u>         | <u>\$5,000/ occur./ day(s)</u>                   |
| <u>Failure to conduct required inspections</u>   | <u>Up to \$32,500/ occur./ day(s)</u>         | <u>\$1,000/ occur./ day(s)</u>                   |
| <u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u> | <u>Up to \$32,500/ occur./ day(s)</u>         | <u>\$500/ occur./ day(s)</u>                     |

\* The frequency of occurrence is a maximum of per day per violation.

\*\* Each BMP and E&S control not installed constitutes a separate violation

E. Pursuant to § 10.1-603.2:1 subsection 2, authorization to administer a qualifying local program shall not remove from the Board the authority to enforce the provisions of the Virginia Stormwater Management Act and attendant regulations.

**4VAC50-60-118. Hearings.**

A qualifying local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and shall ensure that all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

**4VAC50-60-122. Qualifying local program: exceptions.**

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the qualifying local program. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the qualifying local program grant an exception to the requirement that the land disturbing activity obtain a permit.

D. A record of all exceptions granted shall be maintained by the qualifying local program and reported to the Department in accordance with 4VAC50-60-126.

**4VAC50-60-124. Qualifying local program: BMP maintenance.**

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor. If portions of the land are to be transferred or conveyed, legally binding arrangements shall be made to pass maintenance responsibilities to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements between the seller and the buyer, which are legally binding and satisfactory to the qualifying local program, shall be made to ensure continued performance in accordance with this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMP becomes a danger to public health or safety, the qualifying local program has the authority to perform the work and to recover the costs from the owner.

D. The qualifying local program shall require right-of-entry agreements or easements from the owner for purposes of inspection and maintenance.

E. The qualifying local program shall ensure that the flow and drainage patterns associated with a permanent BMP are maintained. Proposed changes to the flow and drainage patterns must be approved by the qualifying local program.

**4VAC50-60-126. Qualifying local program: reporting and record keeping.**

A. On a quarterly basis, a qualifying local program shall report to the Department in a format provided by the Department. The information to be provided shall include but not be limited to the following:

1. Information on projects permitted during the quarter to include permit number, operator name, activity name, acres disturbed, and date of permit coverage;

2. Information on permitted projects terminated during the quarter to include permit number, operator name, activity name, and date of permit termination;

3. Information on each permanent BMP accepted during the quarter to include type of BMP, GPS coordinates, acres treated, and the state waters into which the BMP will discharge;

4. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections during the quarter;

5. Number and type of enforcement actions during the quarter; and

6. Number of exceptions applied for and the number granted or denied during the quarter.

B. A qualifying local program shall keep records in accordance with the following:

1. Permit files shall be kept for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived in accordance with the regulations of the Library of Virginia.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained in perpetuity.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

## **Part IIIB**

### **Department of Conservation and Recreation administered local programs**

**4VAC50-60-128. Authority and Applicability.**

In the absence of a qualifying local program, the Department shall administer the local stormwater management program in a locality in accordance with §10.1-603.3 subsection C. This part specifies the minimum technical criteria for a Department-administered local stormwater management program in accordance with the Virginia Stormwater Management Act, §10.1-603.2 et seq., and the standards and criteria established in these regulations by the Board pursuant to its authority under that article. Such criteria include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit

for Discharges of Stormwater from Construction Activities, issuance of individual permits, inspection, enforcement, and education and outreach components.

**4VAC50-60-132. Technical criteria.**

A. The Department administered local stormwater management programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) and shall comply with the requirements of 4VAC50-60-460 subsection L.

B. When reviewing a federal project, the Department shall apply the provisions of this chapter.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies to impose stricter technical criteria or other requirements as allowed by law.

**4VAC50-60-134. Administrative authorities.**

A. The Department is the permit issuing authority, plan approving authority, and the enforcement authority.

B. The Department or its designee is the plan reviewing authority and the inspection authority.

C. The Department shall assess and collect fees.

D. The Department may require the submission of a reasonable performance bond or other financial surety in accordance with the criteria set forth in §10.1-603.8 prior to the issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required in accordance with the approved stormwater management plan;

3. Upon failure by the applicant to take such action as required, the Department may act and may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within sixty days of the completion of the requirements and conditions of the VSMP General Permit for Discharges of Stormwater from Construction Activities and the Department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit or other legal arrangement shall be refunded to the applicant.

**4VAC50-60-136. Stormwater management plan review.**

A. The Department shall require stormwater management plans for review and approval prior to commencement of land disturbing activities.

B. The Department shall approve or disapprove stormwater management plans according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. An initial stormwater management plan or clearing and grading plan shall

not be considered a complete plan. A complete plan shall at a minimum include the following elements:

- a. Contact Information including the name, address, and telephone number of the property owner and the operator and the tax reference number and parcel number of the property or properties affected;
- b. A narrative description of the site and proposed stormwater management BMPs and the mechanism through which the BMPs will be operated and maintained during and after construction;
- c. The location and the design of the proposed stormwater management BMPs;
- d. A report identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;
- e. A site plan that identifies the location of receiving state waters and that includes pre-development and post-development conditions for drainage areas, including final drainage patterns and changes to existing contours. At a minimum, this will include a topographic base map utilizing 5 foot or less contour intervals of the site which includes all contributing drainage areas and downstream receiving areas of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown necessary to meet the requirements of this chapter;
- f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;
- g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;
- h. Inspection schedules, proposed maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;
- i. Proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance; and
- j. Agreements between the Department and the owner that state where maintenance or repair is neglected, or the stormwater management BMP becomes a danger to public health or safety, the Department has the authority to perform the necessary maintenance and repairs and to recover the costs from the owner.

2. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, and the person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

3. Completeness of a plan shall be determined by the Department, and the applicant shall be notified of any determination, within 30 calendar days of receipt. If a plan is deemed to be incomplete based on the criteria setout in subsection B1 of this section, the applicant shall be notified in writing of the reasons the plan is deemed incomplete. If a determination is not made and communicated to the applicant within the 30 calendar days, the plan shall be deemed complete as of the date of submission and a maximum of 30 additional calendar days will be allowed for the review of the plan.

4. Following the determination that a plan is complete, a maximum of 60 calendar days will be allowed for the review of the plan.

5. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the development project. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the Department's stormwater management program.

6. If a plan meeting all requirements of this chapter and of the Department's stormwater management program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Each approved plan may be modified in accordance with the following:

1. Requests for modifications to an approved plan prior to land disturbance shall be allowed only after the review and written approval of Department. The Department shall have 30 calendar days to respond in writing either approving or disapproving such requests.

2. After a land disturbing activity has commenced, based on an inspection, the permittee, may request amendments to the approved plan to address deficiencies. The Department shall have 15 calendar days to respond in writing either approving or disapproving such request.

3. Based on an inspection, the Department may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

#### **4VAC50-60-138. Issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

The Department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a Department approved stormwater management plan for the land disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities, which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 10 working days of receipt by the Department that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

5. Individual permits for qualifying land disturbing activities may be issued at the discretion of the Board or its designee pursuant to 4VAC50-60-410 subsection B3.

**4VAC50-60-142. Inspections.**

A. Inspections of land disturbing activities shall be conducted by the Department or its designee during construction to ensure that the activity is in compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project shall submit an as-built survey, appropriately sealed and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management BMPs have been constructed in accordance with the approved plan. The BMPs shall be inspected for compliance with the as-built survey prior to the release of any associated performance bond or surety.

C. The operator of stormwater management BMPs shall be required to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement, or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement, and shall provide a written report to the Department.

D. The Department or its designee may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended or shall inspect stormwater management BMPs on an annual basis. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership, the contributing drainage area, and downstream conditions;
4. Demonstrated to be an enforceable inspection program conducted by the Department or its designee, not to include the property owner, that meets the intent of the regulations; and
5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the Department or its designee.

F. The operator shall allow a right of entry to a representative of the Department to conduct inspections of the project.

**4VAC50-60-144. Enforcement.**

A. A Department administered local program shall contain the following components:

1. Informal and formal administrative enforcement procedures including:
  - a. Verbal warning and inspection reports;
  - b. Notice of corrective action;
  - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 subsection 7 and 10.1-603.14 subsection D2;
  - d. Notice to comply in accordance with § 10.1-603.11;
  - e. Special orders in accordance with § 10.1-603.2:1 subsection 7;
  - f. Emergency special orders in accordance with § 10.1-603.2:1 subsection 7; and

g. Public notice and comment period pursuant to 4 VAC 50-60-660.

2. Civil and criminal judicial enforcement procedures including:

a. Schedule of civil penalties setout in subsection C;

b. Criminal penalties in accordance with § 10.1-603.14 subsections B and C; and

c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 subsection D1.

B. The Department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations.

C. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14 subsection A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

| <u>Violations and Frequency of Occurrence *</u>  | <u>Maximum<br/>\$\$/occurrence (occur.)/day</u> | <u>Recommended Minimum<br/>\$\$/occurrence/day</u> |
|--|---|--|
| <u>No Permit Registration</u>  | <u>Up to \$32,500/ occur./ day(s)</u>           | <u>\$10,000/ occur./ day(s)</u>                    |
| <u>No Stormwater Pollution Prevention Plan (SWPPP)</u><br><u>[No SWPPP components including erosion and sediment (E&amp;S Control Plan)]</u>   | <u>Up to \$32,500/ occur./ day(s)</u>           | <u>\$10,000/ occur./ day(s)</u>                    |
| <u>No approved E&amp;S Control Plan</u>  | <u>Up to \$32,500/ occur./ day(s)</u>           | <u>\$10,000/ occur./ day(s)</u>                    |
| <u>Failure to install stormwater Best Management Practices (BMPs) or E&amp;S controls**</u>  | <u>Up to \$32,500/ occur./ day(s)</u>           | <u>\$5,000/ occur./ day(s)</u>                     |
| <u>Failure to conduct required inspections</u>   | <u>Up to \$32,500/ occur./ day(s)</u>           | <u>\$1,000/ occur./ day(s)</u>                     |
| <u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u> | <u>Up to \$32,500/ occur./ day(s)</u>           | <u>\$500/ occur./ day(s)</u>                       |

\* The frequency of occurrence is a maximum of per day per violation.

\*\* Each BMP and E&S control not installed constitutes a separate violation

#### **4VAC50-60-146. Hearings.**

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A. Any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

**4VAC50-60-148. Exceptions.**

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the Department. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the Department grant an exception to the requirement that the land disturbing activity obtain a permit.

D. A record of all exceptions granted shall be maintained by the Department.

**4VAC50-60-152. BMP maintenance.**

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor. If portions of the land are to be sold, legally binding arrangements shall be made to pass maintenance responsibilities to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements between the seller and the buyer, which are legally binding and satisfactory to the Department, shall be made to ensure continued performance in accordance with this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the Department has the authority to perform the work and to recover the costs from the owner.

D. The Department shall require right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

E. The Department shall ensure that the flow and drainage patterns associated with a permanent BMP is maintained and proposed changes to the flow and drainage patterns must be approved by the Department.

**4VAC50-60-154. Reporting and record keeping.**

A. On a quarterly basis, the Department shall compile the following information:

1. Information on projects permitted during the quarter to include permit number, operator name, activity name, acres disturbed, and date of permit coverage;

2. Information on permitted projects terminated during the quarter to include permit number, operator name, activity name, and date of permit termination;
  3. Information on each permanent BMP accepted during the quarter to include type of BMP, GPS coordinates, acres treated, and the state waters into which the BMP will discharge;
  4. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects and individual permit projects inspected and the total number of inspections during the quarter;
  5. Number and type of VSMP general permit and individual permit enforcement actions during the quarter; and
  6. Number of exceptions applied for and the number granted or denied during the quarter.
- B. The Department shall keep records in accordance with the following:
1. Permit files shall be kept for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived in accordance with the regulations of the Library of Virginia.
  2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained in perpetuity or until the program is delegated.
  3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

## **Part IIIC**

### **Department of Conservation and Recreation qualifying local program review procedures**

#### **4VAC50-60-156. Authority and Applicability.**

This part specifies the criteria that the Department will utilize in reviewing a locality's administration of a qualifying local program pursuant to §10.1-603.12 following the Board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations.

#### **4VAC50-60-157. Stormwater Management Program Review.**

A. The Department shall review each Board-approved qualifying local program once every five years on a review schedule approved by the Board. In addition, the Department may be requested by the locality or the general public to review a qualifying local program on a more frequent basis.

B. The review of a Board-approved qualifying local program shall consist of the following:

1. A personal interview between Department staff and the qualifying local program administrator or his designee;
2. A review of the local ordinance(s) and other applicable documents;
3. A review of plans approved by the qualifying local program and consistency of application;
4. An inspection of regulated activities; and

5. A review of enforcement actions.

C. To the extent practicable, the Department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The Department shall determine if the qualifying local program and ordinance are consistent with the state stormwater management regulations and notify the qualifying local program of its findings.

E. If the Department determines that the deficiencies noted in the review will cause the qualifying local program to be inconsistent with the Stormwater Management Act and its attendant regulations, the Department shall notify the qualifying local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the qualifying local program fails to take the corrective action within the specified time, the Department may formally request the Board to take action pursuant to §10.1-603.12 of the Code of Virginia.

## **Part IIID**

### **Virginia Soil and Water Conservation Board authorization procedures for qualifying local programs**

#### **4VAC50-60-158. Authority and Applicability.**

Section 10.1-603.4 subsection 1 requires that the Board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the Board by the Virginia Stormwater Management Act, §10.1-603.2 et seq., this part specifies the procedures the Board will utilize in authorizing a locality to administer a qualifying local program.

#### **4VAC50-60-159. Authorization Procedures for Qualifying Local Programs..**

A. A locality required to adopt a program in accordance with §10.1-603.3 subsection A or those electing to seek authorization to administer a qualifying local program must submit to the Board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);
2. A funding and staffing plan;
3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program; and
4. The process by which the locality will collect permit fees and submit for deposit on a monthly basis to the Virginia Stormwater Management Fund.

B. Any locality seeking authorization to administer a qualifying local program pursuant to this chapter must be administering an Erosion and Sediment Control program that has been found by the Board to be consistent or conditionally consistent with the Erosion and Sediment Control Law, § 10.1-560 et seq.

C. Upon receipt of an application package, the Board or its designee shall have 15 days to determine the completeness of the application package. If an application package

is deemed to be incomplete based on the criteria setout in subsection A of this section, the Board or its designee must identify in writing the reasons the application package is deemed deficient.

D. Upon receipt of a complete application package, the Board or its designee shall have a maximum of 90 calendar days for the review of the application package. During the 90-day review period, the Board or its designee shall either approve or disapprove the application and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and these regulations.

E. A locality required to adopt a qualifying local program in accordance with §10.1-603.3 subsection A shall submit a complete application package for the Board's review within 12 months of the effective date of these regulations and shall adopt a qualifying local program consistent with the Act and this chapter no sooner than 12 months but no later than 18 months of the effective date of these regulations.

F. A locality not required to adopt a qualifying local program in accordance with §10.1-603.3 subsection A but electing to adopt a qualifying local program shall notify the Board in accordance with the following:

1. A locality electing to adopt a qualifying local program may notify the Board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the Board's review within 12 months of the effective date of these regulations and shall adopt a qualifying local program within 18 months of the effective date of these regulations.

2. A locality electing to adopt a qualifying local program that does not notify the Board within the initial six-month period of its intention may thereafter notify the Board at any regular meeting of the Board. Such notification shall include a proposed schedule for adoption of a qualifying local program within 12 months.

G. The Department shall administer the responsibilities of the Act and this chapter in any locality in which a qualifying local program has not been adopted. The Department shall develop a schedule, to be approved by the Board, for implementation of the requirements of this chapter in such localities. Such schedule shall begin no later than 18 months following the effective date of these regulations and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the Board.

## Part XIII

### Fees

#### **4VAC50-60-700. Purpose.**

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule for stormwater management and state agency projects. ~~These regulations in this~~ This part establish establishes the fee assessment and the collection system and distribution systems for those fees.

#### **4VAC50-60-710. Definitions.** Repealed

#### **~~4VAC50-60-710. Definitions.~~**

~~The following words and terms used in this chapter have the following meanings:~~

~~"Permit applicant" means for the purposes of this part any person submitting a permit application for issuance, reissuance, or modification, except as exempted by 4VAC50-60-740, of a permit or filing a registration statement or permit application for coverage under a general permit issued pursuant to the Act and this chapter.~~

~~"Permit application" means for the purposes of this part the forms approved by the Virginia Soil and Water Conservation Board for applying for issuance or reissuance of a permit or for filing a registration statement or application for coverage under a general permit issued in response to the Act and this chapter. In the case of modifications to an existing permit requested by the permit holder and not exempted by 4VAC50-60-740, the application shall consist of the formal written request and any accompanying documentation submitted by the permit holder to initiate the modification.~~

#### **4VAC50-60-720. Authority.**

The authority for this part is pursuant to §§10.1-603.4 and 10.1-603.4:1 of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

#### **4VAC50-60-730. Applicability.**

A. This part applies to:

1. ~~All permit applicants for issuance of persons seeking coverage of a MS4 system under a new permit or reissuance of an existing permit, except as specifically exempt under 4VAC50-60-740 A.~~ The fee due shall be as specified under 4VAC50-60-800 ~~or 4VAC50-60-820.~~

2. All permittees who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740 ~~A-4~~ of this chapter. The fee due shall be as specified under 4VAC50-60-810.

3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

~~B. An applicant for a permit involving a permit that is to be revoked and reissued~~  
Persons who are applicants for an individual permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

~~C. Permit maintenance fees~~ Permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management Permit (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

#### **4VAC50-60-740. Exemptions.**

No permit application fees will be assessed to:

1. Permittees who request minor modifications or minor amendments to permits as defined in 4VAC50-60-10.
2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority.

#### **4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.**

~~A. Permit application fees for all new permit applications are due on the day a permit application is submitted and shall be~~ Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 4VAC50-60-760. Applications will not be processed without payment of the required fee.

~~B. A permit application fee is due on the day a permit application is submitted for a major modification that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a major modification or amendment that is made at the permit-issuing authority's initiative.~~

~~CB. Permit~~ Individual permit or general permit coverage maintenance fees shall be paid annually to the Department or the qualifying local program, as applicable, permit-issuing authority by October 1 of each year the anniversary date of permit issuance or general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination has been received and approved.

MS4 permittees currently paying maintenance fees on October 1 of each year shall continue to pay the maintenance fee on October 1 until their current permit expires. Upon reissuance of the MS4 permit, maintenance fees shall be paid on the anniversary date of the reissued permit.

Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the permit issuing authority by October 1 of that same year.

**4VAC50-60-760. Method of payment.**

A. Fees, as applicable, shall be submitted electronically or be paid by check, draft or postal money order payable to:

1. ~~the~~ The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the Department under the General Permit for Discharges of Stormwater From Construction Activities or Individual Permit for Discharges of Stormwater From Construction Activities, to the permit issuing authority, and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. To pay electronically, go to the ~~Department of Conservation and Recreation's~~ stormwater management section of the ~~Department's~~ Department of Conservation and Recreation's public website at <http://www.dcr.virginia.gov>. Fees not submitted electronically shall be sent to the following address: ~~Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, 203 Governor Street, Richmond, VA 23219.~~

Virginia Department of Conservation and Recreation  
Division of Finance, Accounts Payable  
203 Governor Street  
Richmond, VA 23219

2. The qualifying local program, for coverage authorized by the qualifying local program under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency.

B. Required information for permits or permit coverage: All applicants ~~for new permit issuance, permit reissuance, or permit modification~~ shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN), if applicable.
3. The name of the facility/activity, and the facility/activity location.
4. The type of permit applied for.
5. Whether the application is for a new permit issuance, permit reissuance or permit modification.
6. The amount of fee submitted.
7. The existing permit number, if applicable.

**4VAC50-60-770. Incomplete payments and late payments.**

All incomplete payments will be deemed as nonpayments. The Department or the qualifying local program, as applicable, shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to §6621(a)(2) of the Internal

Revenue Code. This rate is ~~prescribed~~ set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee may be charged to any delinquent (over 90 days past due) account.

~~The permit-issuing authority Department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and/or other administrative costs incurred in pursuing and collecting any past due amount.~~

#### **4VAC50-60-780. Deposit and use of fees.**

All fees collected by the board, qualifying local program, or department in response to this chapter shall be deposited into a special nonreverting fund.

1. Fees collected by the Department shall be deposited into ~~known as~~ the Virginia Stormwater Management Fund ~~established by~~, and shall be used and accounted for as specified in §10.1-603.4:1 of the Code of Virginia. Fees collected by the Department shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

2. Fees collected by a qualifying local program shall be deposited into a special fund created by the program authority and used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part IIIA of these regulations.

Whenever the board has ~~delegated~~ authorized the administration of a stormwater management program ~~to by a locality~~ qualifying local program ~~or is required to do so by the Act,~~ no more than 30% of the total revenue generated by the statewide stormwater management fees collected within the locality in accordance with 4 VAC 50-60-820 shall be remitted on a monthly basis to the State Treasurer for deposit in the Virginia Stormwater Management Fund.

#### **4VAC50-60-790. General.**

~~Each permit application for a new permit each permit application for reissuance of a permit, each permit application for major modification of a permit, and each revocation and reissuance of a permit is a~~ The fees for permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed a separate fee, as applicable. The fees for each type of permit that the permit-issuing authority has the authority to issue, reissue or modify will be as specified in this part.

#### **4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.**

The following fee schedule applies to permit applications for issuance of a new VSMP Municipal Separate Storm Sewer System permit.

|   |                 |
|---|-----------------|
| VSMP Municipal Stormwater / MS4 Individual (Large and Medium) | \$21,300        |
|   | <u>\$12,000</u> |
| VSMP Municipal Stormwater / MS4 Individual (Small)            | \$2,000         |
|   | <u>\$6,000</u>  |

|  |                         |
|--|-------------------------|
| VSMP Municipal Stormwater / MS4 General Permit (Small) | \$600<br><u>\$2,700</u> |
|--|-------------------------|

**4VAC50-60-810. Fee schedules for major modification of MS4 individual permits ~~or certificates requested by the permittee-permittee.~~**

The following fee ~~schedules~~ schedule ~~apply~~ applies to applications for major modification of an individual MS4 permit requested by the permittee:

~~The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.~~

|   |                            |
|---|----------------------------|
| VSMP Municipal Stormwater / MS4 Individual (Large and Medium) | \$10,650<br><u>\$4,000</u> |
| VSMP Municipal Stormwater / MS4 Individual (Small)            | \$1,000<br><u>\$2,000</u>  |

**4VAC50-60-820. Fees for ~~filing permit applications (registration statements) an individual permit or for coverage under the general permits~~ permit issued by the permit-issuing authority for discharges of stormwater from construction and post construction activities.**

~~The following fees apply to filing of permit applications (registration statements) for all general permits issued by the permit-issuing authority, except VSMP Stormwater Construction General Permits~~ an individual permit or coverage under the VSMP General Permit for Discharges of Stormwater From Construction Activities.

~~The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit-issuing authority shall be:~~

|   |                |
|---|----------------|
| <u>VSMP General / Stormwater Management - Phase II Land Clearing [Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 2,500 square feet and less than 0.5 acre]</u> | <u>\$300</u>   |
| <u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Areas within common plans of development or sale less than 1 acre)</u>  | <u>\$300</u>   |
| <u>VSMP General / Stormwater Management - Phase II Land Clearing [Small Construction Activity – Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 0.5 acre and less than 1 acre]</u>            | <u>\$1,500</u> |
| <u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 1 acre and less than 5 Acres)</u>                    | <u>\$2,800</u> |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 acres and less than 10 acres)</u>                   | <u>\$3,500</u> |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 10 acres and less than 50 acres)</u>                  | <u>\$4,600</u> |

|   |                  |
|---|------------------|
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 50 acres and less than 100 acres)</u> | <u>\$6,200</u>   |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 100 acres)</u>                        | <u>\$9,800</u>   |
| <u>VSMP Individual Permit for Discharges of Stormwater From Construction Activities</u>   | <u>\$15,000</u>  |
| <del>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than 5 acres)</del>   | <del>\$500</del> |
| <del>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)</del>                     | <del>\$300</del> |

**4VAC50-60-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater From Construction Activities.**

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater From Construction Activities.

|   |              |
|---|--------------|
| <u>VSMP General / Stormwater Management - Phase II Land Clearing [Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 2,500 square feet and less than 0.5 acre]</u> | <u>\$20</u>  |
| <u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Areas within common plans of development or sale less than 1 acre)</u>  | <u>\$20</u>  |
| <u>VSMP General / Stormwater Management - Phase II Land Clearing [Small Construction Activity – Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 0.5 acre and less than 1 acre]</u>            | <u>\$110</u> |
| <u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 1 acre and less than 5 Acres)</u>                    | <u>\$200</u> |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 acres and less than 10 acres)</u>                   | <u>\$240</u> |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 10 acres and less than 50 acres)</u>                  | <u>\$320</u> |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 50 acres and less than 100 acres)</u>                 | <u>\$440</u> |
| <u>VSMP General / Stormwater Management - Phase I Land Clearing (Large</u>  | <u>\$690</u> |

|  |                |
|--|----------------|
| <u>Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 100 acres)</u> |                |
| <u>VSMP Individual Permit for Discharges of Stormwater From Construction Activities</u>                                      | <u>\$5,000</u> |

**4VAC50-60-830. Permit maintenance fees.**

A. The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued:

|   |                                      |
|---|--------------------------------------|
| VSMP Municipal Stormwater / MS4 Individual (Large and Medium)   | <del>\$3,800</del><br><u>\$8,000</u> |
| VSMP Municipal Stormwater / MS4 Individual (Small)  | <del>\$400</del><br><u>\$4,000</u>   |
| VSMP Municipal Stormwater / MS4 General Permit (Small)  | <u>\$2,000</u>                       |
| VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or <u>areas within common plans of development or sale equal to or greater than 5 100 acres)</u>                                      | <del>\$0</del><br><u>\$1,370</u>     |
| VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or <u>areas within common plans of development or sale equal to or greater than 50 acres and less than 100 acres)</u>                 | <u>\$870</u>                         |
| VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or <u>areas within common plans of development or sale equal to or greater than 10 acres and less than 50 acres)</u>                  | <u>\$640</u>                         |
| VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or <u>areas within common plans of development or sale equal to or greater than 5 acres and less than 10 acres)</u>                   | <u>\$480</u>                         |
| VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or <u>areas within common plans of development or sale equal to or greater than 1 acre and less than 5 Acres)</u>                    | <del>\$0</del><br><u>\$390</u>       |
| VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity – Sites (within designated areas of Chesapeake Bay Act localities) <u>equal to or greater than 0.5 acre and less than 1 acre)</u>            | <u>\$210</u>                         |
| VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) <u>equal to or greater than 2,500 square feet and less than 0.5 acre)</u> | <u>\$40</u>                          |
| VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - <u>Areas within common plans of development or sale less than 1 acre)</u>  | <u>\$40</u>                          |
| <u>VSMP Individual Permit for Discharges of Stormwater From Construction Activities</u>   | <u>\$3,000</u>                       |

~~B. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic~~

~~biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.~~